

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

(212) 805-0194

August 5, 2021

Edwin Ortiz
USM No. 85937-054
FCI Fort Dix
Federal Correctional Institution
P.O. Box 2000
Joint Base MDL, NJ 08640

RE: United States v. Ortiz
18 Cr. 476 (NRB)

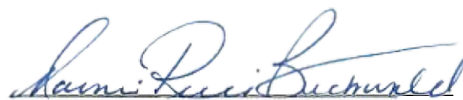
Dear Mr. Ortiz:

I have reviewed your submission dated July 21, 2021 requesting appointment of counsel to assist you with preparing a motion to assess your sentence pursuant to the decision in United States v. Davis, 139 S. Ct. 2319 (2019) (“Davis”). If I understand your submission correctly, you intend to argue that your sentence should be reduced in light of the holding in Davis, which found that the definition of “crime of violence,” under the residual clause of 18 U.S.C. § 924(c), was unconstitutionally vague.

An individual is guilty of violating Section 924(c) if he uses or carries a firearm during and in relation to, or possesses a firearm in furtherance of, a “crime of violence” or a “drug trafficking crime.” 18 U.S.C. § 924(c)(1)(A). While Davis invalidated Section 924(c)’s residual clause, the decision “did not invalidate the ‘drug trafficking crime’ predicate for a Section 924(c) conviction[.]” Flowers v. United States, No. 19 Civ. 11950, 2020 WL 6782047, at *2 (S.D.N.Y. Nov. 18, 2020). As your Section 924(c) conviction arose from brandishing a weapon in relation to a drug crime, your conviction is unaffected by Davis and subsequent cases, such as In re Thomas, 988 F.3d 783 (4th Cir. 2021).

Because it is my understanding that your contemplated motion has no basis in law, I am denying your request for appointment of counsel. If I have misunderstood the nature of your anticipated motion in any way, please let me know.

Very truly yours,


Naomi Reice Buchwald
United States District Judge

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A copy of the foregoing has been mailed to:

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